

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Carlo Vescovi	Team: Squad #14	CCRB Case #: 201906489	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input checked="" type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Friday, 07/12/2019 5:35 PM	Location of Incident: [REDACTED]	Precinct: 52	18 Mo. SOL 1/12/2021	EO SOL 8/29/2021	
Date/Time CV Reported Fri, 07/12/2019 8:30 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 07/24/2019 12:31 PM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. POM Robert Wojnicki	29188	941170	052 PCT
2. LT Kevin Maloney	00000	904435	052 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Alex Hutt	30359	965204	052 PCT
2. POM Joseph Manni	10182	956876	052 PCT
3. POM Tyler Hanson	17921	966611	052 PCT
4. POM John Weiglein	27760	958167	052 PCT
5. SGT Frank Aliffi	00234	939856	052 PCT
6. POM Christophe Montera	07819	961961	052 PCT

Officer(s)	Allegation	Investigator Recommendation
A . POM Robert Wojnicki	Force: Police Officer Robert Wojnicki used physical force against § 87(2)(b)	A . § 87(2)(g)
B . POM Robert Wojnicki	Force: Police Officer Robert Wojnicki used physical force against § 87(2)(b)	B . § 87(2)(g)
C . LT Kevin Maloney	Abuse of Authority: Lieutenant Kevin Maloney searched § 87(2)(b)	C . § 87(2)(g)
D . LT Kevin Maloney	Untruthful Statement: Lieutenant Kevin Maloney provided a false official statement to the CCRB.	D . § 87(2)(g)

Case Summary

On July 16th, 2019, Sergeant James O'Brien of the 52nd Precinct contacted IAB to report use of force on behalf of § 87(2)(b) and § 87(2)(b). The CCRB received this complaint on July 24th, 2019.

On July 12th, 2019 at approximately 5:35pm, § 87(2)(b) was the operator of a motorized scooter on which his wife, § 87(2)(b) was a passenger. § 87(2)(b) drove on § 87(2)(b) at the intersection of § 87(2)(b) in the Bronx. Police Officer Robert Wojnicki of the 52nd Precinct, who was on patrol alone in his vehicle, attempted to conduct a vehicle stop of § 87(2)(b) motorized scooter. PO Wojnicki exited his vehicle on § 87(2)(b) at which point he allegedly pushed § 87(2)(b) causing both § 87(2)(b) and the motorized scooter to fall to the ground (**Allegation A and Allegation B: Force, § 87(2)(g)**). Police Officer Christopher Monterra, Police Officer Alex Hutt, Police Officer Joseph Manni, Police Officer Tyler Hanson, Police Officer John Weiglein, Sergeant Frank Aliffi, and Lieutenant Kevin Maloney, all of the 52nd Precinct, also arrived on scene. Lieutenant Maloney walked to the motorized scooter, which still lay on its side in the street. Lieutenant Maloney then allegedly searched through § 87(2)(b) bag (**Allegation C: Abuse of Authority, § 87(2)(g)**).

The investigation determined that Lieutenant Maloney made a false official statement to the CCRB (**Allegation D: Untruthful Statement, § 87(2)(g)**).

§ 87(2)(b)

Body worn camera footage was received from PO Wojnicki, PO Weiglein, PO Manni, PO Monterra, PO Hanson, PO Hutt, and Lieutenant Maloney, the relevant aspects of which will be discussed in further detail below.

Findings and Recommendations

Allegation (A) Force: Police Officer Robert Wojnicki used force against § 87(2)(b)

Allegation (B) Force: Police Officer Robert Wojnicki used force against § 87(2)(b)

The investigation established the following facts: On July 12th, 2019, at approximately 5:35pm, § 87(2)(b) was the operator of a motorized scooter on which § 87(2)(b) was a passenger. The two were traveling on § 87(2)(b) near the intersection of § 87(2)(b) in the Bronx. PO Wojnicki attempted to effect a vehicle stop on § 87(2)(b). PO Wojnicki stopped his squad car and exited the vehicle, at which point a physical interaction occurred between PO Wojnicki, § 87(2)(b) and § 87(2)(b) which resulted in the motorized scooter falling over. PO Wojnicki then radioed for an additional unit and Lieutenant Maloney arrived on scene seconds later.

It is undisputed that § 87(2)(b) motorized scooter did not have a license plate. It is also undisputed that at the time PO Wojnicki exited his vehicle pursuant to the vehicle stop, § 87(2)(b) had turned the motorized scooter around and faced the opposite direction as his original route of travel and of PO Wojnicki's squad car.

In § 87(2)(b) interview (BR 01), she stated that § 87(2)(b) was operating his motorized scooter on § 87(2)(b) near the intersection of § 87(2)(b) when PO Wojnicki pulled alongside their motorized scooter and instructed § 87(2)(b) to pull over. § 87(2)(b) pulled over to the curb and turned the scooter around so that he was facing the opposite direction of traffic. PO Wojnicki then approached the motorized scooter and allegedly extended both arms and pushed § 87(2)(b) on his right side. At this point, both § 87(2)(b) and § 87(2)(b) fell onto the ground and the motorized scooter tipped over onto its side, causing § 87(2)(b) to injure her knee and require transport to § 87(2)(b) Hospital.

§ 87(2)(b) medical records from § 87(2)(b) (BR 02), indicate that she was discharged with an injury of moderate severity to her knee and instructed to take Motrin and rest, ice, and elevate the injury.

Despite contact attempts, § 87(2)(b) remained unavailable to the investigation.

PO Wojnicki's body worn camera footage (BR 03), begins as he drives his squad car. A motorized scooter, determined by the investigation to be operated by § 87(2)(b) can be seen through the windshield. Both § 87(2)(b) scooter and PO Wojnicki's squad car are facing the same direction. PO Wojnicki briefly activates his sirens and then pulls up on the left side of § 87(2)(b) scooter. PO Wojnicki instructs § 87(2)(b)

§ 87(2)(b) to pull the scooter over several times. PO Wojnicki states, “You don’t have a license plate.” (<<00:10-00:25>>). Three to five seconds later, PO Wojnicki stops and exits the vehicle. As he does so, he affixes the body worn camera to his uniform while walking towards the rear of his vehicle. PO Wojnicki can be heard again stating, “Stop, stop,” while § 87(2)(b) can be heard stating, “It’s [the motorized scooter] electric, it’s electric.” Because the video is shaky and blurred, it does not distinctly capture § 87(2)(b) scooter moving, though it does show that § 87(2)(b) scooter is facing the opposite direction as his original route of travel. After a few seconds, the footage captures a crashing noise and § 87(2)(b) can be heard crying out (<<00:35-00:42>>) “Ah, ah.” The footage does not capture the distinct physical movements which caused the crashing sound. § 87(2)(b) states, “It’s an electric bike, what are you doing?” PO Wojnicki replies, “I’m stopping you, I’m stopping you.” PO Wojnicki then radios for an additional unit but gives no information over the radio other than that the situation is a non-emergency. PO Wojnicki tells § 87(2)(b) “You were trying to get away from me” (<<01:00-01:16>>).

In PO Wojnicki’s CCRB interview (BR 04), he stated he was travelling on § 87(2)(b) near the intersection of § 87(2)(b) when he observed § 87(2)(b)’s motorized scooter without a license plate. PO Wojnicki activated the lights of his squad car and § 87(2)(b) did not pull over immediately. PO Wojnicki commanded § 87(2)(b) to stop from the driver’s seat of his vehicle car. After § 87(2)(b) stopped his scooter, PO Wojnicki stopped and exited his vehicle. As PO Wojnicki walked around towards the rear of his vehicle, he observed that § 87(2)(b) had turned his scooter around and was travelling the opposite direction of traffic, away from the squad car. PO Wojnicki believed that § 87(2)(b) and his passenger § 87(2)(b) were attempting to flee. PO Wojnicki ran after the scooter and reached it in a matter of seconds with the intent to get in front of the scooter and obstruct its path forward. PO Wojnicki put one hand on the scooter but could not say exactly where he touched it. § 87(2)(b) continued to operate the scooter for a few more feet, at which point the scooter tipped over. PO Wojnicki did not know what caused the scooter to fall over. PO Wojnicki testified that at no point did he touch either § 87(2)(b) or § 87(2)(b).

PO Wojnicki completed a Threat, Injury, or Resistance Incident Worksheet regarding this incident (BR 05). PO Wojnicki checked the box that reads, “Force Used by MOS,” and wrote “Attempt to stop bike” in the Reason for Force section. However, in his arrest report for § 87(2)(b) (BR 06), which PO Wojnicki completed himself, PO Wojnicki stated that, “No force was used by any MOS” in the “Force Used” section. PO Wojnicki testified that he filled out a TRI on the basis of § 87(2)(b) injury that occurred during the incident.

In Lieutenant Maloney’s CCRB interview (BR 07), he testified that PO Wojnicki told him on the scene that he had used physical force on § 87(2)(b) to stop § 87(2)(b) scooter. Specifically, PO Wojnicki told Lieutenant Maloney that he had, “Grabbed § 87(2)(b) off [the bike] as he attempted to flee.”

NYPD Patrol Guide, Procedure 221-01 (BR 08) states force may be used when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody. In all circumstances, any application or use of force must be reasonable under the circumstances.

§ 87(2)(b) testimony, PO Wojnicki’s body worn camera footage, and PO Wojnicki’s testimony are all consistent in that after PO Wojnicki instructed § 87(2)(b) to pull over, § 87(2)(b) turned his motorized scooter around so that it was facing the opposite direction of traffic. In his CCRB interview, arrest report, and TRI documentation, PO Wojnicki alleged that § 87(2)(b) attempted to flee the scene after PO Wojnicki effected a vehicle stop. PO Wojnicki also made similar verbal statements captured on his BWC audio on scene. However, § 87(2)(b) stated in her interview that § 87(2)(b) came to a stop after turning his scooter around. Although PO Wojnicki’s body worn captures that § 87(2)(b) scooter faces the opposite direction as it was first travelling, the footage from this aspect of the incident does not capture § 87(2)(b) definitively fleeing the scene. Because of inconsistencies in the two testimonies, the investigation was not able to determine if § 87(2)(b) was indeed fleeing the scene at the time PO Wojnicki approached the scooter.

Testimony from PO Wojnicki and § 87(2)(b) are consistent that once PO Wojnicki arrived at the motorized scooter, PO Wojnicki took some type of physical action after which the scooter tipped over. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation (C) Abuse of Authority: Lieutenant Kevin Maloney conducted a search of § 87(2)(b)

Although § 87(2)(b) did not allege a search of § 87(2)(b) person, Lieutenant Maloney's body worn camera footage (BR 09) captured actions which constitute a search. The footage begins as Lieutenant Maloney arrives on scene in his vehicle. When he exits the vehicle, § 87(2)(b) is captured sitting on the curb of § 87(2)(b) and is not in handcuffs. Lieutenant Maloney walks towards § 87(2)(b) and the scooter which still remains on its side. As Lieutenant Maloney approaches, Sgt. Aliffi lifts § 87(2)(b) to his feet and begins to place handcuffs on him. § 87(2)(b) asks, "You're handcuffing me? For what, sir?" Sgt. Aliffi states, "This is just for our safety" (<<0:49-0:53>>). Lieutenant Maloney is not captured speaking to any officers.

Lieutenant Maloney bends over next to the motorized scooter and places one hand on the handlebars, attempting to lift it upright. The scooter jolts forward before tipping over on its side a few feet from its original location. As the scooter hits the pavement, the underseat compartment opens (<<0:54-1:03>>). Lieutenant Maloney bends over on the curb and his BWC footage captures two bags which have fallen out of the underseat compartment of the scooter: a white plastic shopping bag and a heavier-duty, gray paper shopping bag, both of which have been turned upside down. As Lieutenant Maloney pulls on the bottom of the white plastic bag, the contents of the bag spill onto the pavement next to the motorized scooter (<<1:03-1:07>>). Lieutenant Maloney leaves the spilt contents on the ground and begins to touch the gray, paper bag (<<1:07-1:08>>). Lieutenant Maloney turns the paper bag right side up; no items spill out of the paper bag. At 1:08 on the player timestamp, Lieutenant Maloney's bodyworn camera captures him remove an unidentified item from the paper bag with his left hand and examine it. Lieutenant Maloney then stands up and his camera does not capture his actions below chest level. When Lieutenant Maloney bends back over approximately ten seconds later, the item appears to be back inside the gray paper bag. Lieutenant Maloney closes the underseat compartment of the motorized scooter. Both the plastic bag and the paper bag remain outside of the compartment. Lieutenant Maloney stands and instructs officers to take § 87(2)(b) back to the stationhouse, stating, "Guys, bring § 87(2)(b) in, please. Get medical attention for § 87(2)(b) please" (<<1:45-1:50>>). At this point, PO Hutt escorts § 87(2)(b) to marked squad car visible in the background while § 87(2)(b) remains in proximity to the scooter. Lieutenant Maloney asks PO Weignlen to assist him by holding open the white plastic bag and placing some of the spilled items inside. Lieutenant Maloney instructs PO Weignlein to place the paper bag inside the white plastic bag. Lieutenant Maloney walks away, leaving PO Weignlein holding the white plastic bag.

In his CCRB interview (BR 07), Lieutenant Maloney stated that he arrived on scene approximately thirty seconds after PO Wojnicki radioed for additional officers. Lieutenant Maloney did not know any information regarding the incident apart from the radio request for additional units. When Lieutenant Maloney exited his vehicle, he observed two officers placing § 87(2)(b) in handcuffs from approximately twenty feet away. For this reason, Lieutenant Maloney understood § 87(2)(b) to be under arrest. Lieutenant Maloney did not speak with any officers present on scene. Apart from officers cuffing § 87(2)(b) there were no other reasons that Lieutenant Maloney believed § 87(2)(b) was under arrest. Lieutenant Maloney testified that there are at least two situations in which a civilian could be in handcuffs during a vehicle stop and not be under arrest, including driving with a suspended license or driving under the influence.

Lieutenant Maloney testified that he approached the motorized scooter and attempted to pick it up. When Lieutenant Maloney gripped the handlebars, it caused the vehicle to jolt forward and tip over. As a

result of the impact, the underseat compartment of the scooter opened and some shopping bags fell off the scooter. Lieutenant Maloney did not know the origin of the bags, or if the bags were in view prior to the underseat compartment opening. Lieutenant Maloney walked over to the shopping bags and began to pick up some of the spilled contents. Lieutenant Maloney testified that he, “went through several bags of groceries,” at this point in the incident. When asked to clarify, Lieutenant Maloney testified that he never removed any objects from any of the bags on scene, but rather only placed items inside the bags that had spilled out as a result of the scooter tipping over. Lieutenant Maloney denied searching the bags. Lieutenant Maloney stated he was not looking for anything specific when he was going through the bags. When asked why Lieutenant Maloney removed an object or objects from the bag, as it appears on his body worn camera footage, he stated that he was only placing objects back inside that had spilled out. When asked if § 87(2)(b) was under arrest prior to Lieutenant Maloney’s instruction to, “Take § 87(2)(b) in,” (<<1:45-1:50>>) Lieutenant Maloney stated, “He was in handcuffs.”

According to Lieutenant Maloney’s testimony, he received no information from the radio call apart from the need for an additional unit on scene. PO Wojnicki also testified that he provided no information via radio call apart from the request for an additional unit, which is consistent with his BWC footage.

After arriving at the intersection of § 87(2)(b) all of Lieutenant Maloney’s actions until the moment of the search are captured on various officers’ body worn cameras, including Lieutenant Maloney’s own. PO Wojnicki’s BWC (BR 03) captures Lieutenant Maloney arriving on scene forty-five seconds after the radio request (<<1:00-1:45>>) Five seconds after exiting his vehicle, Lieutenant Maloney approaches § 87(2)(b) on the curb, where he sits without handcuffs (<<1:52-1:57>>). As Lieutenant Maloney stands next to § 87(2)(b) Sgt. Aliffi lifts § 87(2)(b) to his feet and begins to rear cuff him (<<2:01>>). Fifteen seconds later, Lieutenant Maloney approaches the motor scooter and subsequently conducts the search (<<2:01-2:16>>). Lieutenant Maloney testified that he did not speak with any officers before approaching the motor scooter, a statement that is consistent with both his and PO Wojnicki’s BWC footage.

Per *People v. Debour*, 40 N.Y. 2d 210, 233 (1976) (BR 10), an officer is permitted to conduct a full search of a civilian pursuant to an arrest upon probable cause of a crime. Any stop level below an arrest, those being levels one through three, do not allow for a full search of person and their belongings, with the exception of an odor of marijuana during a vehicle stop.

§ 87(2)(g)

[REDACTED]

Allegation (D) Untruthful Statement: Lieutenant Kevin Maloney provided a false official statement to the CCRB.

In Lieutenant Maloney’s CCRB interview, which occurred on November 17, 2020, Lieutenant Maloney (BR 07) testified that he had reviewed his body worn camera footage prior to appearing for his

interview. When asked to describe his interaction with § 87(2)(b) bags, Lieutenant Maloney stated he “went through several bags of groceries.” When asked to clarify, Lieutenant Maloney testified that one of the bags had ripped when it fell, and he was attempting to place the spilled objects into an undamaged bag. Lieutenant Maloney then stated that he did not search the bags. Lieutenant Maloney was shown excerpts of his body worn camera footage (BR 09) from the 0:57 timestamp to the 1:52 timestamp. In these excerpts, Lieutenant Maloney is captured removing an item from inside the grey paper shopping bag. When asked if this was an accurate description of Lieutenant Maloney’s actions, he replied, “No, I was picking up and putting things away.” Lieutenant Maloney was shown the same excerpt of his body worn camera two additional times and given the opportunity two times to amend his prior testimony, but still maintained he was putting items inside the bag rather than taking them out. When asked directly why Lieutenant Maloney took the item out of the grey paper shopping bag, he stated, “It looks like I’m placing things [inside the bag].”

NYPD Patrol Guide, Procedure 203-08 (BR 11), prohibits an officer from making a false official statement and states that an officer found to have made such a statement will be subject to disciplinary action. The statement must be proven to have been made, material, and intentionally false.

§ 87(2)(g)

Civilian and Officer CCRB Histories

- § 87(2)(b)
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- PO Wojnicki has been a member of service for 14 years and has been named a subject in 12 CCRB complaints and 21 allegations, none of which were substantiated. PO Wojnicki’s CCRB history does not reflect any pattern pertinent to this investigation.
- Lieutenant Maloney has been a member of service for 27 years and has been named a subject in 25 CCRB complaints and 62 allegations.
 - 2020041152 involved two substantiated allegations of force (hit against inanimate object, punched/kicked/kneed) against Lieutenant Maloney. The Board recommended charges and the NYPD imposed no penalty.
 - 200402794 involved substantiated allegations of a frisk and a strip-search against Lieutenant Maloney. The Board recommended charges and the NYPD imposed instruction.
 - 9601814 involved two substantiated allegations of discourtesy (word) against Lieutenant Maloney. The Board recommended command discipline and the NYPD disposition is unavailable.
 - 9602913 involved substantiated allegations of force (push/shove) and discourtesy (word) against Lieutenant Maloney. The Board recommended command discipline and the NYPD disposition is unavailable.

Mediation, Civil and Criminal Histories

- This complaint was not suitable for mediation.
- As of September 6th, 2019, the New York City Office of the Comptroller has no record of any Notice of Claim being filed in regard to this complaint (BR 13).

- § 87(2)(b) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
- § 87(2)(b) [REDACTED]
[REDACTED]

Squad No.: 14

Investigator: C.V. Inv. Carlo Vescovi 01/26/2021
Signature Print Title & Name Date

Squad Leader: Cassandra Fenkel IM Cassandra Fenkel 01/28/2021
Signature Print Title & Name Date

Reviewer: _____
Signature Print Title & Name Date